

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

NELLY ALMANZA DE LEON,

Plaintiff,

V.

**WAL-MART STORES EAST, L.P.
AND WAL-MART STORES, INC.,**

Defendants.

CIVIL ACTION FILE NO.:

[SERVED WITH DISCOVERY]

COMPLAINT FOR DAMAGES

Plaintiff Nelly Almanza de Leon files this Complaint against Defendants WAL-MART STORES EAST, L.P. and WAL-MART STORES, INC. (hereinafter jointly referred to as “Defendants”) and shows the Court the following:

JURISDICTION AND VENUE

1.

Plaintiff Nelly Almanza de Leon is an adult and resident of Gwinnett County in the State of Georgia.

2.

Defendant Wal-Mart Stores East, L.P. is a foreign for-profit Limited Partnership registered to conduct business in Georgia and has its principal place of business located at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Defendant Wal-Mart Stores East, L.P. may be served with process by serving a copy of the Summons and Complaint upon its registered agent The Corporation Company located at 106 Colony Park Drive, Suite 800-B, Cumming, Georgia 30040-2794.

3.

Defendant Wal-Mart Stores, Inc. is an Arkansas Corporation with its principal place of business located at 702 S.W. 8th Street, Bentonville, Arkansas 72716, conducts business in the

State of Georgia, and is not registered with the Georgia Secretary of State. Wal-Mart Stores, Inc. may be served with process by serving their registered agent The Corporation Company located at 106 Colony Park Drive, Suite 800-B, Cumming, Georgia 30040-2794.

4.

Venue of this action is properly laid in Fulton County, Georgia.

5.

This Court has proper jurisdiction over this action and the parties thereto.

STATEMENT OF FACTS

6.

On January 19, 2020, Plaintiff was a business invitee at the Wal-Mart store located at 970 Mansell Road, Roswell, Georgia 30076 in Fulton County (hereinafter referred to as the “Premises”). While Plaintiff was shopping at the Premises, Plaintiff slipped and fell.

7.

At all times material to this action, Defendants operated, managed and/or controlled the Premises.

NEGLIGENCE

8.

At all times material to this action, Plaintiff was an invitee on the Premises.

9.

At all times material to this action, Defendants had a non-delegable duty to properly maintain the Premises and to ensure that the Premises was free of hazards which could foreseeably cause bodily injury and harm to invitees, including Plaintiff.

10.

Defendants had a duty to inspect the Premises to discover dangerous and hazardous conditions that may cause injuries to its invitees, and to either eliminate such dangerous and hazardous conditions or to warn its invitees, including Plaintiff, of the existence of any such dangerous or hazardous conditions.

11.

On January 19, 2020, Defendants caused, created and/or permitted an unsafe, dangerous and hazardous condition to exist at the Premises, failed to undertake reasonable inspections of the Premises and/or failed to either eliminate such unsafe, dangerous and hazardous condition or to warn Plaintiff of the existence of the hazardous and dangerous condition.

12.

On January 19, 2020, Plaintiff, while lawfully on the Premises as an invitee of Defendants, Plaintiff was injured as a result of the dangerous, hazardous and unsafe condition of the Premises caused, created and/or unlawfully permitted by Defendants and/or their employees or agents for whom Defendants are vicariously liable.

13.

Defendants failed to cure the dangerous and hazardous condition of objects on the floor of the Premises while Plaintiff was an invitee of Defendants and failed to warn Plaintiff of the dangerous and hazardous condition.

14.

Defendants knew or should have known of the dangerous condition, should have corrected it and should have warned Plaintiff of said dangerous condition.

15.

As a direct and proximate result of the negligence of Defendant and their employees and agents, Plaintiff sustained bodily injury, continues to endure physical and mental pain and suffering, and continues to incur medical expenses and lost wages and other damages to be proven at trial.

16.

At all times pertinent hereto, Defendants and their agents and/or employees had superior knowledge of the unsafe condition of their premises which proximately caused Plaintiff's injuries, said condition at all times prior to his injury being unknown to Plaintiff.

WHEREFORE, Plaintiff prays for the following:

- a) That Defendants be served with process required by law;
- b) That Plaintiff be granted a trial by jury;
- c) That Defendants be found liable for damages sustained by the Plaintiff due to the negligence of the Defendants;
- d) That Defendants be found liable for all court costs associated with this action and for all other costs and damages to be determined by this Court;
- e) That Plaintiff be awarded damages in such sums as this Court and jury shall find appropriate based upon the evidence submitted at the time of trial;
- f) That Plaintiff be awarded attorney's fees and costs of litigation pursuant to O.C.G.A. § 13-6-1; and
- g) That Plaintiff be granted such other and further relief as this Honorable Court may deem as necessary and proper.

This 29th day of July, 2021.

THE BROSNAHAN LAW FIRM

/s/ *Kenneth Brosnahan*

Kenneth W. Brosnahan, Esq.

Georgia State Bar No. 086345

E-mail: kwb@brosnahan-law.com

Linda G. Carpenter, Esq.

Georgia State Bar No. 111285

E-mail: lgc@brosnahan-law.com

Sharon L. Neal, Esq.

Georgia State Bar No. 536060

E-mail: sharon@brosnahan-law.com

Attorneys for Plaintiff

31 Lenox Pointe, N.E.
Atlanta, Georgia 30324
Tel: (404) 853-8964
Fax: (678) 904-6391

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STATE OF GEORGIA

NELLY ALMANZA DE LEON,

Civil Action File No.
21EV004482

Plaintiff,

v.

WAL-MART STORE EAST, L.P.
AND WAL-MART STORES, INC.,

Defendants.

_____ /

ANSWER OF DEFENDANTS WAL-MART STORES EAST, LP
AND WAL-MART STORES, INC.

COME NOW, Defendant WAL-MART STORES EAST, L.P. and WAL-MART STORES, INC. (collectively and in the singular, "Wal-Mart" or "Defendant"), and make this Answer to Plaintiff's Complaint as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

Plaintiff's alleged damages, if any, were directly and proximately caused by Plaintiff's own contributory negligence and failure to exercise ordinary care.

THIRD DEFENSE

Plaintiff was not in the exercise of ordinary care for her own safety in the premises, and by the exercise of ordinary care could have avoided any injury to herself; and on account thereof, Plaintiff is not entitled to recover from Defendant.

FOURTH DEFENSE

Defendant denies that it was negligent in any manner whatsoever or that any negligent act or omission on its part caused or contributed to any injury or damage alleged to have been sustained by Plaintiff.

FIFTH DEFENSE

Plaintiff assumed the risk of any hazard that was presented and is thereby barred from recovering against Defendant.

SIXTH DEFENSE

Defendant responds to the enumerated paragraphs of Plaintiff's Complaint as follows:

1.

Defendant lacks sufficient information to either admit or deny the allegations contained in paragraph 1 of Plaintiff's Complaint, and, therefore, the same are denied.

2.

Defendant admits the allegations contained in paragraph 2 of the Plaintiff's Complaint.

3.

Defendant denies the allegations contained in paragraph 3 of Plaintiff's Complaint.

4.

Defendant denies at this time the allegations contained in paragraph 4 of the Plaintiff's Complaint.

5.

Defendant denies at this time the allegations contained in paragraph 5 of Plaintiff's Complaint.

6.

Defendant denies the allegations contained in paragraph 6 of the Plaintiff's Complaint.

7.

Defendant denies the allegations contained in paragraph 7 of Plaintiff's Complaint.

8.

Defendant lacks sufficient information to either admit or deny the allegations contained in paragraph 8 of the Plaintiff's Complaint, and, as such, the same are denied.

9.

Defendant denies the allegations contained in paragraph 9 of Plaintiff's Complaint.

10.

Defendant denies the allegations contained in paragraph 10 of the Plaintiff's Complaint.

11.

Defendant denies the allegations contained in paragraph 11 of Plaintiff's Complaint.

12.

Defendant denies the allegations contained in paragraph 12 of the Plaintiff's Complaint.

13.

Defendant denies the allegations contained in paragraph 13 of Plaintiff's Complaint.

14.

Defendant denies the allegations contained in paragraph 14 of the Plaintiff's Complaint.

15.

Defendant denies the allegations contained in paragraph 15 of Plaintiff's Complaint.

16.

Defendant denies the allegations contained in paragraph 16 of the Plaintiff's Complaint.

17.

All other allegations contained in the Plaintiff's Complaint which are not specifically responded to herein, are denied.

18.

Defendant denies Plaintiff's prayer for relief, including subparagraphs A., B., C., D., E., F., and G. thereof.

WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed with all costs cast upon the Plaintiff. DEFENDANT DEMANDS TRIAL BY A JURY OF TWELVE (12) PERSONS AS TO ALL ISSUES SO TRIABLE.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorney for Defendants
WAL-MART STORES EAST, L.P.
WAL-MART STORES, INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326
(404) 365-4535
(404) 364-3138 (fax)
ndeeb@mmatllaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing ANSWER OF DEFENDANT WAL-MART STORE EAST, LP has this day been filed and served upon opposing counsel via Odyssey eFileGA.

This the 13th day of August, 2021.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorney for Defendant
WAL-MART STORES EAST, L.P.
WAL-MART STORES, INC.

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12-PERSON JURY DEMAND

COME NOW Defendants, WAL-MART STORES EAST, L.P. and WAL-MART
STORES, INC. and demand a trial by a jury of twelve (12) persons.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorney for Defendant
WALMART STORES EAST, LP

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ndeeb@mmatllaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing **12-PERSON JURY DEMAND** has this day been filed and served upon opposing counsel via Odyssey eFileGA.

This the 13th day of August, 2021.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorney for Defendant
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CERTIFICATE REGARDING DISCOVERY

Pursuant to Uniform State Court Rule 5.2, as amended, the undersigned hereby certifies that the following discovery has been served upon all persons identified in the Certificate of Service attached hereto and incorporated herein by reference:

- 1) REQUEST FOR ADMISSIONS TO PLAINTIFF
- 2) ANSWERS TO REQUEST FOR ADMISSIONS
- 3) INTERROGATORIES AND REQUEST FOR PRODUCTION

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb

Nicholas E. Deeb

Georgia Bar No. 117025

Attorney for Defendant

WALMART STORES EAST, LP

3445 Peachtree Road, N.E.
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ndeeb@mmatllegal.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing CERTIFICATE REGARDING DISCOVERY has this day been filed and served upon opposing counsel via Odyssey eFileGA.

This the 13th day of August, 2021.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb

Nicholas E. Deeb

Georgia Bar No. 117025

Attorney for Defendant

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NOTICE OF TAKING DEPOSITION OF NELLY ALMANZA DE LEON

YOU ARE HEREBY notified that beginning on the 6th day of January, 2022, commencing at 11:00 a.m., at the office of The Brosnahan Law Firm, 31 Lenox Pointe, N.E., Atlanta, GA 30324, the deposition will be taken of Nelly Almanza De Leon. Said deposition will be taken for purposes of discovery and all other purposes provided by law before an officer duly authorized to administer oaths. The deposition shall continue from day-to-day until completion. This deposition may also be videotaped by a videographer.

McLAIN & MERRITT, P.C.

_____/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorneys for Defendant

3445 Peachtree Road, N.E.
Suite 500

Atlanta GA 30326
(404) 266-9171
(404) 364-3138 (fax)
ndeeb@mmatllaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing **NOTICE OF TAKING DEPOSITION OF NELLY ALMANZA DE LEON** has this day been filed and served upon opposing counsel via the Odyssey e-file system.

This the 13th day of August, 2021.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorneys for Defendant

3445 Peachtree Road, N.E.
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